

Additional Proposals on H.R. 5460

1. Test 2: Assets test

A. Tangible property

Capital means tangible property furnished by individual.

B. Maintenance costs

Maintenance costs and fixed operating costs paid by individual count for asset test.

C. Leases

Leases which are long-term in relation to useful life of assets count for asset test.

D. Service-Recipient Tractor Leases

Truck tractor leases from or financing by service-recipient count for asset test, if arranged on market terms.

2. Test 2: Sales Test

A. Salespersons

Eligible individuals are salespersons in insurance, real estate, or direct sales.

B. Location of direct sales

Direct sales include incidental sales at locations other than homes.

3. Test 3: Income Fluctuation

More than 90 percent of remuneration must be related to sales or other output.

4. Employer-Provided Benefits

Individuals electing safe-harbor are denied the statutory exclusions for employer-provided group-term life insurance, death benefits, accident and health benefits, group legal services, educational assistance plans, and pension, profit-sharing, stock, or annuity plans.

Prepared by the staff  
of the Joint Committee  
on Taxation  
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## 1. Assets Test

### A. Tangible Property

This proposal would clarify the capital rule in the assets test by providing that more than one-third of the value of the service must be attributable to tangible property furnished by the individual performing the service.

### B. Maintenance Costs

This proposal would specify that for purposes of determining whether more than one-third of the value of the service is attributable to tangible property furnished by the individual performing the service, the individual's payment (without direct or indirect reimbursement) of maintenance costs and of fixed operating costs with respect to tangible property shall be treated as the furnishing of tangible property.

### C. Leases

The asset test would be clarified by providing that for purposes of determining whether more than one-third of the value of the service is attributable to tangible property furnished by the individual performing the service, an asset which is leased by an individual for a period which is long-term in relation to the useful life of the asset shall be treated as tangible property furnished by the individual.

### D. Service-Recipient Tractor Leases

This modification in the asset test would permit an individual to take into account truck tractors leased from or financed by the service-recipient in meeting the capital requirement, if the leasing or financing of the truck tractor is arranged on terms and conditions comparable to those available in the open market.

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## 2. Sales Test

### A. Salespersons

This clarification in the sales test would specify that the test covers individuals performing selling services by explicitly providing that the individuals covered by the test are salespersons who are insurance agents, licensed real estate agents, or engaged in direct sales of consumer products.

### B. Location of Direct Sales

This proposal would clarify the sales test with respect to direct sellers by providing that the individual must be engaged in direct sales to consumers of products of a supplier most of the consumer products of which are sold by direct sales in the home. This change would allow some sales of such consumer products at places outside of the home, for example, sales at offices or other work locations, to qualify under the "safe harbor." The requirement that the sales must be for use or consumption and not for retail resale would not be altered.

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### 3. Income Fluctuation Test

This proposal would specify that more than 90 percent of the individual's remuneration (whether or not paid in cash) must be directly related to sales or other output (but not to piece-work) rather than to the number of hours worked. As a result, less than 10 percent of workers' compensation could be paid on a basis which is not determined by sales.

(As part of this proposal, a technical amendment would eliminate the duplicative income fluctuation test in the sales test.)

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#### 4. Employer-Provided Benefits

Because the safe-harbor rules in H.R. 5460 apply only for purposes of employment taxes, an individual might qualify for treatment as an independent contractor under the bill's "safe-harbor" for employment tax purposes, while at the same time qualifying as a common law employee under chapter 1 for purposes of the income exclusions for certain employer-provided benefits.

This proposal would provide that if an individual is treated as an independent contractor under the "safe-harbor" criteria of the bill, the individual shall not be treated as an employee for the purpose of certain employer-provided "fringe" benefits which are not subject to tax under the Code. The individual would be denied the statutory exclusions provided under sections 79 (relating to group-term life insurance purchased for employees), 101(b) (relating to employee's death benefits), 104, 105, and 106 (relating to accident and health insurance or accident and health plans), 120 (relating to group legal service plans), section 127 (relating to educational assistance plans), and subtitle A (relating to contributions to or under a stock bonus, pension, profit sharing, or annuity plan and with respect to distributions under such a plan, or by a trust forming part of such a plan.)

In addition, the written contract requirement of the bill would be amended to require notice that the individual will not be treated as an employee for purposes of the exclusions for the specified employer-provided benefits.



